

Federal Communications Commission

DA 97-720

APR 22 10 43 AM '97

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations.
(Wray and Otis, Colorado)

MM Docket No. 97-117
RM-9009

NOTICE OF PROPOSED RULE MAKING

Adopted: April 9, 1997

Released: April 18, 1997

Comment Date: June 9, 1997

Reply Comment Date: June 24, 1997

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed by New Directions Media, Inc. ("petitioner"), licensee of Station KATR-FM, Channel 252C2, Wray, Colorado, requesting the substitution of Channel 252C1 for Channel 252C2 at Wray, the reallocation of Channel 252C1 from Wray to Otis, Colorado, and modification of the license for Station KATR-FM accordingly. Petitioner states that it will apply for Channel 252C1 if reallocated, as requested.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See *Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O")*, 4 FCC Rcd 4870 (1989),¹ *recon. granted in part ("Change of Community MO&O")*, 5 FCC Rcd 7094 (1990). In support of the proposal petitioner states that the requested reallocation and modification of its license to specify Otis (population 451),² an incorporated community which is not within nor near an urbanized area, is mutually exclusive with its existing authorization at Wray (population 1,998). The distance between Wray and Otis is 40.9 kilometers (25 miles) whereas a distance of 224 kilometers (139 miles) is required in

¹There are three basic requirements to obtain a change in community of license pursuant to Section 1.420(i), as follows: (1) the new allotment must be mutually exclusive with the existing allotment; (2) the allotment to the new community must better serve the Commission's allotment priorities and policies than maintaining the existing arrangement; and (3) the change must not deprive the existing community of its sole existing broadcast station. *Change of Community R&O*, *supra*, at 4873-4874.

²Population figures reported herein were taken from the 1990 U.S. Census.

this instance.³

3. In further support of the proposal petitioner states that the adoption of its proposal would result in a preferential arrangement of allotments consistent with the *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1992),⁴ as the reallocation would provide Otis with its first local aural transmission service, whereas Wray would retain local aural transmission service from fulltime Station KRDZ-AM.⁵ Additionally, petitioner advises that the substitution of channels and reallocation will enable Station KATR-FM to increase the degree of service within its 1 mV/m contour to persons residing in Akron (pop. 1,599), in Washington County (pop. 4,900), as well as to most of Logan County (pop. 17,400), and considerable portions of Morgan County (pop. 21,939), Yuma County (pop. 9,100) and Phillips County (pop. 4,300).

4. We believe the petitioner's proposal warrants consideration as the reallocation request could provide Otis with its first local aural transmission service, and would enable Station KATR-FM to expand its service area without depriving Wray of local aural transmission service. However, as petitioner proposes to relocate its transmitter site to accommodate its request, the proposal will result in areas that will lose existing reception service as well as areas that will gain new reception service. Although petitioner has provided some information in its proposal concerning the populations which will receive new service, it is requested to provide data regarding areas and populations that will gain as well as those that will lose existing service if Channel 252C1 is reallocated to Otis, as requested.⁶ The requested data should also include the total reception services that are now available within the gain and loss areas.⁷

³Coordinates specified by the petitioner for a transmitter site at Otis are those of the city reference at coordinates 40-08-54 and 102-57-48. Coordinates at the licensed site of Station KATR-FM at Wray are 40-12-36 and 102-29-24.

⁴The allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).]

⁵Petitioner advises that it has filed an application for an assignment of its license of Station KRDZ(AM) to KRDZ Broadcasters, Inc., which has filed a petition for rule making to add an FM channel at Eckley, Colorado in RM-9018.

⁶In evaluating proposals pursuant to Section 1.420(i), the Commission has stated: "The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both." *See Modification, supra*, at 5 FCC Rcd 7097.

⁷Reception services are those aural broadcast services that can be received within a given geographical area, including full-time AM, as well as FM commercial stations. In determining reception service provided by an FM station, the area of service circumscribed by the station's 1.0 mV/m signal contour, assuming maximum facilities for the class of station, except for Class C, should be considered. For the latter class, the minimum or existing Class
(continued...)

5. A staff engineering analysis of the proposal indicates that Channel 252C1 can be allotted to Otis, Colorado, consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules, utilizing the petitioner's proposed city reference site at coordinates 40-08-54 NL and 102-57-48 WL.

6. In view of the above, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Otis, Colorado	--	252C1
Wray, Colorado	252C2	--

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before June 9, 1997, and reply comments on or before June 24, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Robert D. Zellmer
President, New Directions Media, Inc.
P. O. Box 2475
Greeley, CO 80632

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603

⁷(...continued)

C facilities, whichever is greater, should be used in the study. The area of reception service for full-time AM stations is defined according to whether it is a clear channel Class AM station or another class of full-time AM station. For a clear channel Class A station, the reception area is defined by a station's 0.5 mV/m groundwave contour, based on its licensed facilities. For all other classes of full-time AM stations, reception service is defined as that service received within a station's nighttime interference-free contour. For purposes of determining the availability of aural services in the areas affected by the change of community proposal, the petitioner should include in its study the reception services provided by all relevant AM and FM stations. Reception areas that receive at least five radio services are considered to be well-served.

and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments: Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239), at its headquarters, 1919 M Street, N.W., Washington, D.C.